Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic - New	)	
York), Bell Atlantic Communications,	)	
Inc., NYNEX Long Distance Company,	)	CC Docket 99-295
and Bell Atlantic Global Networks, Inc.	)	
for Authorization to Provide In-Region	)	
InterLATA Services in New York	)	

COMMENTS OF CORECOMM LIMITED AND CORECOMM NEW YORK, INC.

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SUMMARY

CoreComm Limited and CoreComm New York Inc. ("CoreComm") urges the Commission to deny the request of Bell Atlantic to provide in-region interLATA services in New York.

Although the New York Public Service Commission —and Bell Atlantic itself — have made impressive progress in opening local exchange markets in New York to competition, the statutory conditions for interLATA relief have not been fully met. Among the most obvious deficiencies in Bell Atlantic's application is that competitors do not yet have non-discriminatory access to the facilities necessary to provide advanced telecommunications services. Although the New York PSC is conducting an inquiry into Bell Atlantic's DSL pricing methodology, this investigation is far from complete, and other important questions about Bell Atlantic's DSL practices for have been left for resolution in future proceedings. The absence of final DSL rules in New York is particularly disturbing because Bell Atlantic's own data appears to show that the company does not provide the same level of service to competitors who order DSL-capable loops as it provides to its retail customers.

Equally troubling is the absence of strong mechanisms to ensure that the company will continue working to eliminate the remaining barriers to competition in the provision of both advanced services and more conventional offerings such as voice calling. In the absence of tough sanctions, Bell Atlantic will have little incentive to maintain existing levels of service to competitors, much less a compelling reason to make further progress. The New York PSC is considering a plan designed to deter backsliding, but these measures are not yet in place. Even if

the current plan were available, it suffers from serious weaknesses because it is cumbersome and confusing.

Incentives for further progress are especially important in light of the serious difficulties CoreComm has encountered in using Bell Atlantic's procedures for the ordering, provisioning, and billing of facilities and functions for competitors. Bell Atlantic's procedures often put CoreComm at a major competitive disadvantage by delaying service and failing to provide the information necessary to keep customers informed. In a disturbing number of cases, Bell Atlantic's systems fail to provide timely and accurate billing information, damaging CoreComm's reputation among customers and forcing it to expend substantial resources monitoring and correcting problems caused by Bell Atlantic.

To be sure, Bell Atlantic has made substantial progress in opening local exchange markets in New York. The advances made to date in New York, however, are a direct result of the Commission's insistence that each and every element of the "competitive checklist," along with the other relevant statutory requirements, must be met before a Section 271 application can be approved. The Commission can and should insist that Bell Atlantic address the deficiencies in its application and grant interLATA relief only when the New York market is fully and permanently opened to competition.

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CoreComm Limited and CoreComm New York, Inc. (collectively "CoreComm"), by their attorneys, hereby submit their comments on the application of Bell Atlantic-New York ("Bell Atlantic") for authority to provide interLATA services in the State of New York. For the reasons set forth in detail below, CoreComm believes that, despite the significant and commendable progress that has been made under the leadership of the New York Public Service Commission ("New York PSC") and the considerable efforts of Bell Atlantic itself, Bell Atlantic is not yet in full compliance with the statutory preconditions for the relief it requests.

The job of opening local telecommunications markets to full and fair competition, in accordance with the provisions of Sections 251 and 271 of the Communications Act of 1934, as amended, is immensely complicated. Indeed, this task may be considerably more complex than Congress envisioned when it drafted the interconnection, resale, unbundling, and collocation

provisions of the Telecommunications Act of 1996 ("1996 Act"). Nonetheless, it is a task that must be seen through to completion, so that consumers may receive the full benefits of competition — lower prices, better service, faster innovation, and a wider array of choices.

Bell Atlantic has devoted considerable effort to fulfilling its responsibilities, and in many respects its cooperation with CLECs — especially in New York — has been impressive. Despite the progress that has been made to date, however, the challenge of opening the local exchange market in New York has not been fully met. Competitive access to the facilities needed to provide advanced services is not yet available. Unacceptable imperfections remain even in Bell Atlantic's systems to provision and bill traditional facilities and capabilities for competitive local exchange carriers ("LECs"). Measures to prevent backsliding – so that markets, once opened, stay opened – have not yet been fully implemented. Each of these flaws independently requires the denial of Bell Atlantic's application.

CoreComm urges the Commission to resist the temptation to grant an "almost meritorious" application. Instead, the Commission should insist that Bell Atlantic first finish the job of creating the conditions needed for robust, fair, and enduring competition. Thus, the Commission should deny Bell Atlantic's application, but with a clear message that approval will be promptly forthcoming as soon as the remaining deficiencies have been remedied.

I. Introduction

CoreComm is a growing, publicly-traded company that provides integrated local and long distance voice services as well as Internet access and high-speed data offerings to residential and business customers. CoreComm is exploiting the convergence of communications technologies

to offer bundled packages of services designed to give consumers greater flexibility, choice, and value than are available from other telecommunications service providers. CoreComm believes its strategy of combining its own facilities with leased elements of the local and interexchange networks owned by other carriers will allow it to provide a wide range of advanced telecommunications services efficiently and expeditiously to markets throughout the United States, allowing it to become a leading facilities-based carrier.

CoreComm is a product of the opportunities created by the Telecommunications Act of 1996. Since March of 1998, when it began selling local telephone service in Ohio, CoreComm has launched several strategic business initiatives with a view to becoming a nationally-recognized telecommunications provider. CoreComm recently introduced its "Smart LEC" network-build strategy with the acquisition announcements of MegsINet, Inc. and the assets of USN Communications, Inc., an Internet backbone provider and wide-scale reseller, respectively (the latter with a significant resale presence in New York). CoreComm's Smart LEC network strategy combines some of the latest communications technologies with a unique, low-cost, efficient delivery system for bundled Internet access and local and long distance telephony services. CoreComm is pursuing collocation arrangements in multiple states, preparing to deploy switching, ATM, and routing facilities, and initiating a variety of DSL offerings that will serve residential and business customers on a facilities and resale basis.

Today, CoreComm serves residential and business subscribers in the Bell Atlantic region, including the State of New York. CoreComm's paging and Internet services are available nationwide. CoreComm has participated in various proceedings of State public utility

commissions and has availed itself of the opportunities resulting from the 1996 Act, the Commission's rulings, and the ongoing proceedings at the New York PSC. On that basis, CoreComm is pleased to report that enormous progress has been made in the New York marketplace in creating the conditions for robust competition.

This transition, however, is not yet finished. Bell Atlantic is not currently meeting its responsibilities with regard to providing the facilities and capabilities needed to enable the competitive provision of advanced telecommunications service. In fact, even the mechanisms needed to facilitate competitive entry for more traditional telecommunications services are not all functioning properly. Moreover, neither Bell Atlantic nor state regulators have adopted meaningful safeguards to ensure that equitable conditions for competition, once achieved, will be maintained.

For each of these reasons, Bell Atlantic's application should be denied, but without prejudice to a subsequent application that demonstrates full compliance with the statutory standards.

II. The Network Elements Needed for Competition in Advanced Telecommunications Services Are Not Yet Available on a Nondiscriminatory Basis.

The market-opening measures contemplated by the 1996 Act are intended not just to promote competition in plain old telephone service but to spur innovation and promote the availability of advanced services as well. The policy framework of the 1996 Act is expressly intended "to accelerate rapidly private sector deployment of *advanced* telecommunications and information technologies and services to all Americans by opening all telecommunications

markets to *competition*."[1] The Commission has a statutory mandate "to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing [among other things] measures that promote competition in the local telecommunications market . . . ."[2]

Understandably, both the Commission and its counterparts at the state level have made it their top priority to enable new entrants to offer services akin to those the incumbent LECs have traditionally provided. Impediments that hinder competition in advanced services have also been recognized as a problem,[3] but the process of addressing these issues is not as far along – either at the FCC[4] or in the state commissions.

Bell Atlantic has not shown — and cannot currently show — that it provides non-discriminatory access to facilities and capabilities needed by competitors to offer advanced services. For example, although Bell Atlantic has filed a DSL tariff that lists recurring and non-recurring charges for DSL-conditioned loops, the New York PSC has opened an inquiry into

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[1] See H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. (1996) ("Conference Report") at 1 (emphasis added).

[2] See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 706(a).

[3] As early as 1996, the Commission recognized the need for competitive access to data-conditioned loops. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15691 (1996) ("Local Competition Order"), affirmed in part and reversed in part sub nom. AT&T v. Iowa Utilities Board, 525 U.S. 366 (1999) ("Iowa Utilities Board").

[4] The Commission's forthcoming UNE Remand Order reportedly clarifies the responsibility of incumbent LECs to provide loop qualification information and DSL-conditioned loops. See "FCC Promotes Local Telecommunications Competition; Adopts Rules on Unbundling of Network Elements," News Release (issued September 15, 1999) ("UNE

whether these charges are consistent with TELRIC pricing principles.[5] The New York PSC's investigation of this issue is on a fast track, but it is clear that Bell Atlantic cannot demonstrate that it offers DSL-conditioned loops at TELRIC-based rates. Indeed, a host of issues concerning the adequacy of Bell Atlantic's DSL tariff remain to be resolved.[6]

Bell Atlantic's own evidence shows serious shortcomings in the company's DSL performance. While Bell Atlantic claims it provides ADSL loops to competitors in the same intervals as its own ADSL service,[7] Bell Atlantic's own data shows that Bell Atlantic technicians have missed twice as many appointments to provision DSL-capable loops for competitors as for Bell Atlantic's retail customers.[8] Bell Atlantic contends that it has shown it can handle

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Remand News Release") at 2. At this writing, the text of the UNE Remand Order had not been released.

[5] CoreComm has submitted evidence that Bell Atlantic's DSL rates do *not* reflect TELRIC pricing methodologies. See Direct Testimony of Dr. August H. Ankum on Behalf of CoreComm New York, Inc., Case No. 98-C-1357 (New York PSC, filed Oct. 18, 1999).

[6] See Panel Testimony of Bell Atlantic - New York on Costs and Rates for ADSL/HDSL-Compatible Loops and Digital-Designed Loops, Case No. 98-C-1357 at 1-2 (New York PSC filed October 18, 1999) ("We are aware that numerous issues relating to the non-price terms and conditions of the Tariff have been raised in comments filed by various CLECs pursuant to the September 9 Notice, and that some of those issues are also being addressed in ongoing collaborative meetings."). Of course, the pending proceeding is addressing only certain significant issues associated with DSL provisioning. Even if *all* the complex questions related to competitive provision of DSL services were addressed promptly, some delay between the issuance of a final order by the New York PSC and implementation by Bell Atlantic would be inevitable.

[7] See Application by Bell Atlantic - New York for Authorization to Provide In-Region InterLATA Services in New York, CC Docket No. 99-295 (FCC Filed Sept. 29, 1999) ("Bell Atlantic Brief") at 22.

[8] See Lacouture/Troy Declaration ("Lacouture/Troy Declaration") at Appendix K (showing Bell Atlantic missed 6.9 percent of DSL appointments requested by competitors but missed only 3.02 percent of appointments for its own retail DSL customers).

commercial volumes of ADSL loop orders "because provisioning ADSL involves substantially the same processes as involved with BA-NY's other complex unbundled loop and special service offerings."[9] The performance data indicate, however, that Bell Atlantic is not providing these types of offerings in a non-discriminatory manner. In August, for instance, the average interval for provisioning complex UNE orders requiring the dispatch of a technician[10] was twice as long for competitive LECs as it was for Bell Atlantic's customers. The data show that Bell Atlantic took an average of 7.53 days to provision complex UNEs for competitive LECs; the comparable interval for Bell Atlantic's retail customers was only 3.76 days.[11] The Commission has established that these types of disparities in timeliness of service indicate that an incumbent is not providing non-discriminatory service to competitors as required by Section 271.[12]

In addition, Bell Atlantic is not currently providing competing carriers with timely access to loop qualification information. According to the supporting documentation submitted with Bell Atlantic's application, DSL loop qualification information is available via the pre-ordering interface for only 131 central offices in New York. Even with the offices expected to be added

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9 See Lacouture/Troy Declaration at ¶ 81.

10 A technician must be dispatched when a competitive LEC orders a DSL-capable loop. See Lacouture/Troy Declaration at ¶ 82.

11 This analysis is based on submeasurement PR 2-02 in Bell Atlantic's performance measurements. This measures the average completion intervals for "total dispatch" for UNE complex orders. See Canny Affidavit at Appendix B. The subheading titled, "UNE POTS/SPECIAL SERVICES" in Appendix D to the Canny Affidavit shows that in August, the average completion interval was 3.76 days for Bell Atlantic's customers and 7.53 days for competitors. Similar performance disparities are reflected in the June and July data.

by the end of the year (well *after* the date of the application), only 93 percent of the New York central offices with completed or pending collocation requests will be prequalified.[13] Therefore, Bell Atlantic has failed to demonstrate that — as the date of its application — it provides "nondiscriminatory access to network elements [needed for advanced telecommunications services] in accordance with the requirements of section 251(c)(3) and 252(d)(1)."[14]

As the Commission has repeatedly stated, a BOC's application must be complete on the day it is filed.[15] Bell Atlantic's shortcomings in advanced services are fatal, because where additional action is required to show compliance with Section 271, an application to provide in-region interLATA services "is premature and should be withdrawn."[16]

III. Mechanisms To Prevent Backsliding Have Not Yet Been Established

In reviewing Bell Atlantic's application, the Commission's primary focus must be on evidence bearing on whether the local exchange market in New York was open on the date the

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[12] See Louisiana II at ¶¶ 124-26 (data that "consistently support a general conclusion that BellSouth provides services to competing carriers' customers in twice the amount of time that it provides service to its retail customers . . . is not equivalent access").

[13] See Miller/Jordan Declaration at ¶ 17.

[14] See 47 U.S.C. § 271(c)(2)(B)(ii).

[15] See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-1, Order, 12 FCC Rcd 3309, 3320-21 (1997) ("Ameritech February 7th Order") ("because of the strict 90-day statutory review period, the section 271 review process is keenly dependent on . . . an applicant's submission of a complete application at the commencement of a section 271 proceeding"); see also Updated Filing Requirements for Bell Operating Company Application Under Section 271 of the Communications Act, DA 99-1994 (rel. Sep. 28, 1999). Allowing Bell Atlantic to supplement its application with new information during this proceeding would be "unfair to interested third parties seeking to comment on a fixed record triggered by the date that a section 271 application is filed." Ameritech February 7th Order, 12 FCC Rcd at 3321 (1997).

application was filed. CoreComm submits, however, that the Commission also must carefully consider whether the market is likely to remain open to competition and whether Bell Atlantic will continue working to eliminate residual barriers to competition. While Bell Atlantic's cooperation with competitors in New York has been impressive in many respects, the incentive to continue these efforts will evaporate once the application is granted, absent appropriate safeguards to prevent backsliding.

In its most recent, and comprehensive, order on a Section 271 application, the Commission identified backsliding as a major factor in evaluating whether an applicant has made the public interest showing required by Section 271(d)(3)(C). The Commission recognized the importance of ascertaining whether an applicant "has agreed to performance monitoring (including performance standards and monitoring requirements) in its interconnection agreements with new entrants" and noted its "particular[] interest[] in whether such performance monitoring includes appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards."[17]

The New York PSC also has recognized the need to prevent backsliding. This summer it issued a Notice of Proposed Rulemaking to consider Bell Atlantic's Performance Assurance Plan

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[16] Ameritech February 7 Order at ¶ 55 (internal citations omitted).

[17] See Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20806 (1998) ("Louisiana II"); see also, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1964, as amended, to Provide In-Region, InterLATA Services In Michigan, 12 FCC Rcd 20749 (1997) (stating that the Commission's review would include inquiry into existence of self-executing enforcement mechanisms).

and Change Control Assurance Plan.[18] More recently, the New York PSC sought comments on an Amended Performance Assurance Plan and an Amended Change Control Assurance Plan submitted by Bell Atlantic on September 24, just five days before Bell Atlantic filed its application for authority to provide in-region interLATA services.[19] The amended plans are still under consideration by the New York PSC, and reply comments were not submitted until October 4. As noted previously, Bell Atlantic is not entitled to ask the Commission or competitors to rely on its promises concerning future behavior, and the existence of a *proposed* plan — which has not been approved by the New York PSC or the FCC — is entitled to no weight whatsoever in this proceeding. This Commission cannot simply assume that appropriate anti-backsliding measures will – at some time in the future – be put into effect.

Even if the PAP, as currently drafted, were incorporated into the New York PSC's rules, it would suffer from serious weaknesses. While CoreComm applauds the New York PSC's work on the PAP, at best the plan will address major systemIC failures; it cannot address day-to-day impediments to the ability of competitive carriers such as CoreComm to compete. Moreover, the potential monetary penalties for failure to comply with the PAP – in the form of bill credits – are insufficient to deter anticompetitive behavior. Indeed, they may be regarded by Bell Atlantic as nothing but a cost of doing business. As the Common Carrier Bureau recently stated in connection with the SBC/Ameritech merger:

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[18] Case No. 97-C-0271, Section 271 Proceeding (New York PSC Aug. 1, 1999).

[19] See Letter from Debra Renner, Acting Secretary, New York PSC, to All Parties in Case Nos. 97-C-0271, 99-C-0949 (New York PSC Sept. 24, 1999).

> "The Bureau believes that the potential liability under [a performance] plan must be high enough that an incumbent could not rationally conclude that making payments under an enforcement plan is an acceptable price to pay for hindering or blocking competition."[20]

In rejecting SBC's proposed cap on liability for inferior performance in Texas, the Chief of the Bureau wrote that the staff was concerned that a $120 million annual cap on Southwestern Bell's potential payments was "too low to foster parity performance in a market the size of Texas."[21] This assessment is equally applicable to Bell Atlantic's incentives to comply with the PAP in New York after it is permitted to enter the long distance market.

Even if the penalties outlined in the PAP were theoretically large enough to deter abuse, the use of subcategories would shield Bell Atlantic from ever paying the maximum penalties. These "sub-caps" serve no purpose whatsoever other than to reduce Bell Atlantic's exposure to liability for misconduct or failure to perform. The New York State Attorney General has repeatedly warned that the PAP "would place only $12.5 million per month at risk even if BA-NY fails every single service standard by such a wide margin that CLECs are completely unable to serve their customers."[22] This problem was also extensively discussed by AT&T in recent comments to the New York PSC:

> [U]nder the PAP addressed in the Notice, the $150 million

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[20] Letter from L. Strickling, Chief, FCC Common Carrier Bureau, to P. Hill-Ardoin, SBC, dated September 28, 1999, at 2 ("FCC Letter to SBC").

[21] FCC Letter to SBC at 2.

[22] See Comments of New York Attorney General, Case No. 97-C-0271 at 3 (New York PSC, filed July 23, 1999) (quoting Comments of New York Attorney General, Case No. 97-0271 (New York PSC, filed May 10, 1999)).

> maximum annual cap is actually twelve separate maximum monthly caps of $12.5 million each. Moreover, each of these monthly caps is in fact two separate category caps of $6.25 million each, one for the Mode of Entry ("MOE") portion of the plan and one for the Critical Measures portion. And each of those caps is in turn divided into numerous sub-caps whose limits are supposedly based upon a view as to the relative importance of each individual mode of entry or performance category.[23]

These and other serious flaws in the PAP as it currently stands undermine its effectiveness as a deterrent to misconduct. The lack of protections against backsliding should weigh heavily in the required public interest analysis under Section 271. So, too, should the danger that Bell Atlantic will reduce its cooperation in efforts to eliminate residual barriers to competition.

IV. Bell Atlantic Does Not Meet its Responsibility To Provide Adequate Access to Ordering and Provisioning Capabilities to Competing Carriers

Bell Atlantic's petition portrays a market where competitive carriers are given all the information they could possibly want for preordering, ordering, provisioning, maintenance and repair, billing, and technical support. In Bell Atlantic's account, all of these functions operate smoothly and without significant error. Unfortunately, Bell Atlantic's description of these processes is not consistent with CoreComm's experience. Other parties undoubtedly will provide more exhaustive documentation of the deficiencies they perceive in Bell Atlantic's performance, but CoreComm offers the following description of its own recent difficulties with

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[23] Comments of AT&T on the Performance Assurance Plan and Change Control Assurance Plan, Case No. 97-C-0271 at 19-20 (New York PSC, filed October 4, 1999) (internal citations omitted).

ordering and provisioning as examples of the differences between Bell Atlantic's portrayal and the real problems faced by competitors in New York.[24]

A number of deficiencies are evident in the processes and procedures for "move, add, or change" ("MAC") orders. These orders are submitted for existing CoreComm customers who are moving their location, adding lines, or changing their mix of telecommunications services. Like the initiation of new service, changes in existing service require CoreComm to rely heavily on Bell Atlantic's wholesale offerings – accessed through the Graphical User Interface ("GUI") – to provide quality service to CoreComm customers. Because of the deficiencies described below, CoreComm has had difficulties communicating with and providing service to customers. The result is that Bell Atlantic's failure to perform damages CoreComm's reputation among consumers.

One significant problem involves MAC orders exceeding four lines, for which BA-NY has established procedures that are different from those that apply to orders of one to four lines. When CoreComm submits an order involving five to nine lines, Bell Atlantic suggests that competitive LECs obtain a due date from Bell Atlantic's "SMARTS" clock, and Bell Atlantic later will confirm whether facilities will be available in time to meet this date. For orders involving more than nine lines, Bell Atlantic suggests a due date at least four days from the time of submission, with the actual date again dependent on the results of a facilities check.[25] To give

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[24] CoreComm acquired the assets of USN, including a substantial number of customers in New York, in May 1999.

[25] Letter from Georgene Horton, Director, Account Management Resale Services, Telecom Industry Services, Bell Atlantic to USN Communications (Dec. 14, 1998).

itself a cushion, CoreComm tells customers they will be notified of the date when the work will be done within five to seven business days, based on the assumption that Bell Atlantic will perform the necessary facilities check within this time. CoreComm has found, though, that Bell Atlantic often fails to meet even this five-to-seven day interval for the return of a facilities check. In these cases, even after escalating the request for notification of facilities availability to BA-NY management, it can take as long as two weeks before BA-NY informs CoreComm whether facilities are available and what the due date will be. During this period of delay, CoreComm is unable to tell its customers when service will be available, resulting in great frustration for both CoreComm and its customers. This problem affects an estimated 15 percent of CoreComm's orders for more than four lines. Performance has worsened in recent months because of the inexperience of new Bell Atlantic employees.

A second problem concerns Bell Atlantic's failure to meet due dates, once they are established. This problem applies to all MAC orders, whether they involve four lines or fewer or five lines or more. CoreComm has examined a sample of MAC orders and backed out from the data all situations where the due date could not be met either because of a network outage (cable failure) or because the customer prevented it. Of the remaining cases, Bell Atlantic failed to meet the due dates approximately 22 percent of the time.

In many instances, CoreComm is not informed that the appointment has been missed and does not learn about the problem until the customer calls and complains or when order entry (in

the GUI) is updated. This compounds the customer's dissatisfaction, because CoreComm has not warned the customer that service will not be available as originally scheduled.[26]

Finally, in "move" or "add" situations, CoreComm generally receives a bill from Bell Atlantic for "time and materials." This bill indicates an amount but not the specific work that was performed, making it difficult to explain any charges to a customer who wants to know what work was performed, how long it took, or other details about the service provided. These bills are not rendered until as much as 60 days after the work has been done, so the customer may be less willing to pay because the service performed is no longer fresh in the customer's memory.

V. Bell Atlantic Does Not Meet its Responsibility To Provide Complete, Accurate, and Timely Billing Information

CoreComm often experiences unacceptable problems with the bills it receives from Bell Atlantic and in its efforts to evaluate the accuracy of these bills. These problems manifest themselves in several ways. Two of the more severe problems include (i) untimely bills and (ii) lost customer notification errors:

Timeliness of Carrier Billing

According to Bell Atlantic, it provides wholesale bills to carriers within ten business days – the interval established by the Carrier-to-Carrier Guidelines – 99.5 percent of the time.[27] These are the bills that carriers like CoreComm must pay to Bell Atlantic for use of Bell Atlantic's

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[26] To Bell Atlantic's credit, it generally is responsive to CoreComm's complaints that the appointment has been missed and will seek to ensure that service will be installed for CoreComm's customers within a day or two after the missed appointment.

[27] Miller/Jordan Declaration at ¶ 85.

facilities and services, such as resold Bell Atlantic services. CoreComm's experience differs from Bell Atlantic's description.

As explained by Bell Atlantic, resellers receive up to ten monthly bills, one for each of the ten billing periods in the month. For example, Bell Atlantic provides performance results for August showing that it provides wholesale bills to customers within ten business days 99.54 percent of the time.[28/] During that month, however, of the ten monthly wholesale bills sent to CoreComm, three were not received within ten business days.[29/] Similarly, two of the ten wholesale bills for July were not received within ten business days and two out of ten June bills were not received within ten business days.[30/] This experience reflects a 23 percent variance from the standard, not a 0.5 percent variation as claimed by Bell Atlantic.

Because CoreComm analyzes all of its bills for the preceding month, it must receive the bill for the last billing period of the month in a timely manner. In June, one of the two late bills was for the last billing period, June 28, 1999. This bill was not received until July 19, 1999. These late bills create administrative burdens for CoreComm because Bell Atlantic expects to be paid within 30 days. The 30 days are counted not from the date when the bill was issued or sent, but from the close of the billing cycle. If the wholesale bill is not provided in a timely fashion, CoreComm has little time to review the bill before payment to Bell Atlantic is due. Also, to the extent the billing information permits CoreComm to discover errors in bills it has sent to its

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28/ Canny Declaration, Exh. D., submetric BI-2-01.

29/ For the billing period ending August 4, 1999, CoreComm received the bill on August 24. For the bill period ending August 7, CoreComm received the bill on August 25, 1999. And for the bill period ending August 10, CoreComm received the bill on August 25, 1999.

customers, delays in receiving the data from Bell Atlantic slow CoreComm's efforts to correct its customers' bills, perhaps for another complete billing cycle. This increases the likelihood of unnecessary friction between CoreComm and its customers.

Lost Customer Notification Errors

In a significant number of instances, Bell Atlantic has issued incorrect notifications indicating that CoreComm had lost a resale customer. The erroneous loss notification comes to CoreComm's attention because Bell Atlantic continues billing CoreComm for reselling service to the customer that purportedly has decided to stop using CoreComm's services. A recent audit found that, in 252 cases in the May-to-July period, CoreComm received a notice stating that it had lost a customer (known as a "loss of line notification") but subsequently received a bill from Bell Atlantic for the same customer.

CoreComm's analysis of line loss notifications over the past several months reveals an error rate of approximately four percent. In other words, CoreComm continues to receive bills associated with four percent of the customers that, according to Bell Atlantic, have chosen a different carrier. It appears that in just over half of those cases, the customer has in fact been "lost" and Bell Atlantic is improperly billing CoreComm for costs (such as number portability charges) associated with that customer. In the other cases, Bell Atlantic's representation that the customer has chosen another carrier is erroneous, but by the time the error is discovered,

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30/ For the bill for the period ending July 4, 1999, CoreComm did not receive a bill until September 1, 1999.

CoreComm has already stopped billing the customer, and subsequent efforts to "back bill" the customer may strain CoreComm's relationship with the customer. As a result, CoreComm loses revenue it otherwise would have collected, because it does not bill customers for whom it receives loss of line notifications. Moreover, not only does CoreComm lose revenues from its customers, but it also faces liability for Bell Atlantic's resale charges for those customers. Thus, CoreComm must spend significant internal resources auditing, checking, and then correcting Bell Atlantic's loss of line errors.

VI. Conclusion

The Commission has previously rejected five applications filed under Section 271. Given the time that has elapsed since the passage of the 1996 Act, the substantial progress Bell Atlantic has made in fulfilling its market-opening responsibilities, the credibility, resources, and fortitude of the New York PSC, and the perceived benefits of bringing additional competition to the long distance market, CoreComm can understand why the FCC may be tempted to grant the current petition. The advances made to date in New York, however, are a direct result of the Commission's steadfast insistence that each and every element of the competitive checklist, along with the other relevant statutory requirements, must be met before a Section 271 application can be approved.

Now is not the time for the Commission to relax its standards. The Commission can and should insist that Bell Atlantic address the deficiencies in its application and grant interLATA relief only when the New York market is fully and permanently opened to competition.

Respectfully submitted,

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October 19, 1999

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DECLARATION OF ANDREW T. FABRIZIO

I, Andrew T. Fabrizio, do hereby declare and state under penalty of perjury as follows:

1. I am the Director of Customer Operations, Northeast Region, for CoreComm. My duties include managing and overseeing operations of CoreComm's telecommunications services in the State of New York, including the company's dealings with Bell Atlantic.

2. I have read the foregoing Comments of CoreComm on Bell Atlantic's application to provide interLATA services in New York. With respect to statements made in those comments, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information, or belief.

Andrew T. Fabrizio

Date: October 19, 1999

CERTIFICATE OF SERVICE

I, D. Ellen Love, hereby certify that, on this 19th day of October, 1999, I served a copy of the attached Comments of CoreComm Limited and CoreComm New York, Inc. via hand-delivery on the following:

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
The Portals - Room TW-B-204
445 12th Street, S.W.
Washington, D.C. 20554
(Original and Six)

Janice Myles, Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
The Portals - Room 5-C-327
445 12th Street, S.W.
Washington, D.C. 20554
(Twelve)

Dorothy Attwood, Office of Commissioner
William Kennard
FCC
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Linda Kinney, Office of Commissioner Ness
FCC
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Rebecca Beynon, Office of Commissioner
Furchtgott-Roth
FCC
The Portals - Room 8-A-302
445 12th Street, S.W.
Washington, D.C. 20554

Kyle Dixon, Office of Commissioner Powell
FCC
The Portals - Room 8-A-204
445 12th Street, S.W.
Washington, D.C. 20554

Sarah Whitesell, Office of Commissioner Tristani
FCC
The Portals - Room A-C-302
445 12th Street, S.W.
Washington, D.C. 20554

Howard Shelanski, Chief Economist
FCC
The Portals - Room 7-C-347
445 12th Street, S.W.
Washington, D.C. 20554

Dr. Robert Pepper, Chief
Office of Plans and Policy
FCC
The Portals -
445 12th Street, S.W.
Washington, D.C. 20554

Carol Mattey, Chief
Policy Division, Common Carrier Bureau
FCC
The Portals - Room
445 12th Street, S.W.
Washington, D.C. 20554

International Transcription Service (ITS)
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554

Michael E. Glover
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Arlington, Virginia 22201

D. Ellen Love

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